

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0530

Income Tax

For Tax Years 2001-03

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Income Tax—Corporate

Authority: IC 6-8.1-5-1

Taxpayer protests the imposition of income tax.

II. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a retail company with operations in several states. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for 2001, 2002 and 2003. Taxpayer protested the proposed assessments. Further facts will be supplied as required.

I. Income Tax—Corporate

DISCUSSION

Taxpayer protests all assessments for the tax years 2001, 2002 and 2003. The Department refers to IC 6-8.1-5-1(b), which states in relevant part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

Taxpayer's protest letter provides no reference to any statute, regulation or court case and includes no documentation or analysis. Taxpayer has failed to meet the burden imposed by IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty

The Department issued proposed assessments and the ten percent negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer did incur a deficiency which the Department had determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a).

Taxpayer has not affirmatively established that there was no failure to pay the deficiency, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

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